

## UNITED STATES DISTRICT COURT

for the  
Southern District of OhioFILED  
RICHARD W. NAGEL  
CLERK OF COURT

11/24/20

In the Matter of the Search of

(Briefly describe the property to be searched  
or identify the person by name and address)

Red/White iPhone in clear case, FCC ID: BCG-E3087A

Case No. 3:20MJ546

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
WEST. DIV. DAYTONAPPLICATION FOR A SEARCH WARRANT BY TELEPHONE OR OTHER RELIABLE  
ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Red/White iPhone in clear case, FCC ID: BCG-E3087A

located in the Southern District of Ohio, there is now concealed (identify the person or describe the property to be seized):

- (1) Text messages, photos and videos concerning the use, possession, or acquisition of firearms and ammunition;
- (2) Text messages, photos and videos concerning the use, acquisition, consumption, purchase of controlled substances, including marijuana

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. § 922(g)(3) & 924(a)	possession of a firearm or ammunition by a user of, or addict to, controlled
(2)	substances

The application is based on these facts:

See Attached Affidavit of Fred Zollers

- ☒ Continued on the attached sheet.
- ☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Fred Zollers

Applicant's signature

Fred Zollers, TFO of the FBI

Printed name and title

Sworn to before me and affirmed in my presence.

Date: 11/24/20

City and state: Dayton, Ohio

Sharon L. O'Neil



signature

US Magistrate Judge

Printed name and title

Print

Save As...

Attach

Reset

AFFIDAVIT

1. I, Frederick D. Zollers, a Federal Task Force Officer (TFO) of the Federal Bureau of Investigation (FBI), United States Department of Justice, am hereinafter referred to as Affiant.
2. Affiant is a sworn law enforcement officer in the State of Ohio and has been employed by the Montgomery County Ohio Sheriff's Office for the past fourteen years. Your Affiant is currently a deputized TFO assigned to the FBI's Southern Ohio Safe Streets Task Force (SOSSTF), Dayton Resident Agency and has served in that capacity since November 2014. Your Affiant is familiar with federal criminal laws including, but not limited to, federal drug trafficking and firearm offenses.
3. This Affidavit is in support of:
  - a. a search warrant for the following electronic device as there is probable cause to believe that evidence of crimes, including violations of: 18 U.S.C. § 922(g)(3) & 924(a)(2) (Possession of ammunition by an unlawful user of, or a person addicted to, any controlled substance); exists and can be found on the below described electronic device, which is presently located in law enforcement custody within Montgomery County, Ohio: Red/White iPhone in clear case, FCC ID: BCG-E3087A;
  - b. Based on my training and experience, I believe that the following items will be found on the I-Phone:
    - (1) Text messages, photos and videos concerning the use, possession, or acquisition of firearms and ammunition;
    - (2) Text messages, photos and videos concerning the use, acquisition, consumption, purchase of controlled substances, including marijuana;

4. The information contained in this Affidavit is based upon an investigation conducted by your Affiant together with information provided by other law enforcement officers knowledgeable of the facts and circumstances involved in this matter. The Affidavit is intended to show merely that there is sufficient probable cause for the requested search warrant and does not set forth all the Affiants knowledge about this matter.

#### **FACTS SUPPORTING PROBABLE CAUSE**

5. On Thursday, October 1, 2020, the Affiant, along with members of the FBI Southern Ohio Safe Streets Task Force (SOSSTF) were conducting surveillance in the area of 228 Fer Don Road in Harrison Township, Montgomery County, Ohio. The residence of 228 Fer Don Road was the location of two recent shootings, resulting in one homicide. Investigators believe the shooting incidents are occurring between feuding Dayton based neighborhood gangs. During each shooting incident investigators recovered dozens of pistol and rifle caliber casings. Several of the neighboring residences and vehicles parked on Fer Don Road were struck by gun fire during the shooting incidents.
6. While conducting surveillance, the Affiant observed a white Buick bearing Ohio temporary registration D785595 depart from the alley behind 228 Fer Don Road. The Affiant observed several suspected bullet holes in the hood of the Buick. The Affiant began following the Buick in his unmarked vehicle, equipped with emergency lights and siren. At the intersection of Ashwood Avenue and Riverside Drive, the driver later identified as **TEVIN BROWN** (hereinafter, "**BROWN**") committed a traffic violation. **BROWN** drove to 420 Ryburn Avenue and parked the Buick.
7. At this point, the Affiant pulled behind the Buick and activated his vehicle's emergency lights and initiated a traffic stop on **BROWN**. The Affiant observed **BROWN** begin making furtive movements inside of the Buick. The Affiant observed Brown's head and shoulders dip forward toward the steering wheel. The Affiant exited his vehicle and approached the driver's door of the Buick. **BROWN** opened the driver's door and held his hands up in air and said something along the lines of "I'm going to jail, please don't

take me to jail.” As the Affiant stood beside the open driver’s door, the Affiant observed an assault rifle style pistol and magazine on the driver’s side floorboard between where **BROWN** was seated and the center console. **BROWN** was removed from the Buick and detained without incident. The Affiant detected the strong odor of raw marijuana emitting from inside of the Buick. After **BROWN** exited the Buick, the Affiant observed a .223 caliber bullet on the front passenger seat. **BROWN** was found to be in possession of the following but not limited items; a small baggie of suspected marijuana, a red/white iPhone in clear case, and \$927.00 U.S. currency.

8. Investigators conducted a probable cause search of the Buick. The assault rifle style pistol was an AR pattern pistol marked Anderson Manufacturing AM-15 multi-cal (serial number 18272525). The Anderson Manufacturing AM-15 multi-cal pistol was leaning against the driver’s seat positioned with the barrel resting on the driver’s floorboard. The loaded magazine had been removed from the magazine well and was recovered on the driver’s floorboard beside the Anderson Manufacturing AM-15 pistol. The high capacity forty round capable magazine was loaded with seventeen (17) .223 caliber bullets. Investigators also located four individually packaged plastic bags of suspected marijuana inside of the Buick. The four individually packaged plastic bags of marijuana each contained a piece of paper labeled “Purple Punch,” “GMO,” “Wedding Cake,” and “SFV.” There was \$60.00 U.S. currency in with the bags of suspected marijuana. The four individually packaged bags of marijuana had an approximately field weight of 110 grams. Based on training and experience, the Affiant knows that individually packaged and labeled baggies of suspected marijuana in amongst with U.S. currency is indicative of drug trafficking. Investigators located a box for a digital scale inside of the Buick.
9. The Affiant and Special Agent (SA) Robert Buzzard conducted a post Miranda interview with **BROWN**. In sum and in substance, **BROWN** admitted to purchasing and owning the Anderson Manufacturing AM-15 multi-cal pistol. **BROWN** advised he had no criminal history prohibiting him from possessing the Anderson Manufacturing AM-15 pistol and he had it for protection due to the recent shooting incidents occurring at 228 Fer Don Road. **BROWN** advised when he initially observed the Affiant’s unmarked

vehicle pull behind his Buick, he was concerned the Affiant was possibly someone trying to shoot him. **BROWN** advised when he observed the emergency lights, he un-chambered the .223 caliber round and removed the magazine from the magazine well of the Anderson Manufacturing AM-15 multi-cal pistol. When questioned about the marijuana located on his person and inside of the Buick, **BROWN** advised he smokes marijuana every hour of every day. **BROWN** said he has smoked marijuana since age 16. At the time of the interview **BROWN** was twenty six years old. **BROWN** said he used to sell marijuana, but said he has not engaged in selling marijuana recently.

10. Based on a review of **BROWN**'s criminal history, the Affiant knows **BROWN** does not have any felony convictions. **BROWN** has a 2014 conviction for M2 Obstructing Official Business (case number 2014CRB02378) through the Montgomery County Dayton Municipal Court.

11. The Affiant subsequently spoke with Special Agent (SA) Ken Pitney of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, who has training and experience in determining the place of manufacture for firearms and ammunition. SA Pitney advised the .223 caliber ammunition loaded in the Anderson Manufacturing AM-15 multi-cal pistol traveled in or affected interstate or foreign commerce.

12. Based on training and experience, the Affiant knows that drug traffickers and drug users frequently use cellular phones to carry out their activities. They use cellular phones to communicate with customers, their associates, and their suppliers. It is often common for drug traffickers to have multiple phones because certain phones may be used only for certain purposes. For instance, a trafficker may use one phone just to speak to his supplier, while using a different phone to speak only to his customers. This is a counter-surveillance technique intended to make it harder for law enforcement to identify the user of the phones and his associates. Traffickers commonly use prepaid cellular phones to hide their identity as the user because they generate no billing information, often require little to no identifying information to activate, can sometimes be activated using an alias,

and can be easily disposed of should the trafficker believe that law enforcement has identified the phone number.

13. The Affiant also knows that traffickers commonly text message each other or their customers, such as meeting locations, prices, and other information needed to carry out the sale of drugs (sometimes in code). They commonly store phone numbers for their associates and customers in the electronic phone book/contacts list, often under alias or code names. The Affiant knows that traffickers will sometimes use the cellular phone to take photographs or videos of themselves, their location, their product, their firearms or their associates, which can be electronically stored on the cellular phone. Information can also be downloaded from the internet onto the cellular phone, such as email, social network information (like "Facebook"), travel information like maps or directions, or photographs. Call data, such as missed calls, received calls, or dialed calls are often electronically stored in the cellular phone. The information electronically stored on a phone can also be evidence of who possessed or used a cellular phone at a given time, can contain direct evidence of drug trafficking acts, and can help identify drug trafficking locations or associates. Affiant is aware that there are tools to extract electronic data from a cellular phone so that law enforcement can review it for items of evidentiary value.
14. The Affiant believes that the electronic device seized from **BROWN** may contain phone numbers, text messages, and other electronically stored information related to the possession, supply, and use of the above described firearm, ammunition, and suspected drugs. Therefore, the Affiant requests a search warrant be issued so that investigators can retrieve the electronic data from the phone listed above.

15. Based on the foregoing, I believe that there is probable cause to issue

a. a search warrant for the following electronic device as their probable cause to believe that evidence of crimes, including violations of: 18 U.S.C. § 922(g)(3) & 924(a)(2) (Possession of ammunition by an unlawful user of, or a person addicted to, any controlled substance); exists and can be found on the below described electronic device, which is presently located in law enforcement custody within Montgomery County, Ohio:

(1) Red/White iPhone in clear case, FCC ID: BCG-E308&A

*Fred Zollers*

Frederick D. Zollers  
Task Force Officer  
Federal Bureau of Investigation

24th

Subscribed and sworn to before me on \_\_\_\_ November 2020

*Sharon L. Ovington*

Sharon L. Ovington  
United States Magistrate Judge

